

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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A3 ENERGY, INC., a Nevada Corporation;
GREGG NELSON, individually and as
President of A3 Energy, Inc.,

Plaintiffs,

v.

COUNTY OF DOUGLAS, a political
subdivision of the State of Nevada and d.b.a.
the China Spring Youth Camp; DAVID
GAMBLE, individually and as director of the
China Spring Youth Camp, as officer of Grace
Community Church, Gardnerville, and as
officer of City of Refuge; STEPHEN
THALER, individually and as former director
of the China Spring Youth Camp; WENDY
GARRISON, individually and as director of
the China Spring Youth Camp; CITY OF
REFUGE, a Nevada non-profit corporation;
GRACE COMMUNITY CHURCH,
GARDNERVILLE, a Nevada non-profit
corporation; VICTOR C. RICE, individually
and as officer of Grace Community Church,
Gardnerville; and DOES I-XX, inclusive,

Defendants.

COUNTY OF DOUGLAS, a political
subdivision of the State of Nevada, CITY OF
REFUGE, a Nevada non-profit corporation;
GRACE COMMUNITY CHURCH,
GARDNERVILLE, a Nevada non-profit
corporation,

Counterclaimants,

v.

A3 ENERGY, INC., a Nevada corporation;
GREGG NELSON, individually and as
President of A3 ENERGY, INC.,

Counterdefendants.

3:11-CV-00875-LRH-WGC

ORDER

I. Procedural History

On December 6, 2011, Plaintiffs A3 Energy, Inc. (“A3”) and Gregg Nelson (“Nelson”) (collectively “Plaintiffs” or “Counterdefendants”) filed a Complaint against County of Douglas, David Gamble, Steven Thaler, Wendy Garrison, City of Refuge, Grace Community Church, and Victor C. Rice (collectively “Defendants”), alleging federal law claims for civil rights violations (ostensibly municipal liability pursuant to 42 U.S.C. §1983); equal protection violations; and due process violations; and state law claims for breach of contract; breach of the implied covenant of good faith and fair dealing; intentional interference with prospective economic advantage; civil conspiracy; negligent hiring, training, and supervision; and injunctive and declaratory relief. Doc. #1.¹ On April 2, 2012 and June 1, 2012, County of Douglas, City of Refuge, and Grace Community Church (collectively “Counterclaimants”) filed a Counterclaim against Plaintiffs/Counterdefendants alleging state law claims for breach of contract; breach of the implied covenant of good faith and fair dealing; deceptive trade practices; fraud in the inducement; intentional misrepresentation and fraud; and negligent misrepresentation. Doc. #8; Doc. #27.

On May 9, 2013, Defendants Gamble, City of Refuge, and Grace Community Church filed a Motion to Dismiss for Lack of Prosecution. Doc. #58. Also on May 9, 2013, Nelson filed a “Notice of Withdrawal” (Doc. #57), which the Court construed as a Motion for Voluntary Dismissal Pursuant to Federal Rule of Civil Procedure 41(a)(2) (*see* Doc. #64, p. 2). On August 23, 2013, the Court entered an Order dismissing with prejudice A3’s claims against Defendants Gamble, City of Refuge, and Grace Community Church. Doc. #64. The Court also ordered that Nelson’s claims against Defendants David Gamble, City of Refuge, and Grace Community Church shall be dismissed without prejudice and gave Nelson thirty (30) days to withdraw his “Notice of Withdrawal” (Doc. #57) in order to avoid the attachment of prejudice. Doc. #64. On September

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¹ Refers to the Court’s docket number.

1 16, 2013, Nelson filed a Withdrawal of his “Notice of Withdrawal,” thereby avoiding the
2 attachment of prejudice. Doc. #65.

3 Before the Court is Counterclaimants Grace Community Church and City of Refuge’s
4 Motion for Clerk’s Entry of Default on Counterclaims Pursuant to Federal Rule of Civil Procedure
5 55(a). Doc. #66. Also before the Court is Nelson’s *pro se* Motion to Dismiss Counterclaims. Doc.
6 #68. Counterclaimants Grace Community Church and City of Refuge filed a Response. Doc. #69.
7 Counterclaimant County of Douglas also filed a Response. Doc. #71. Defendant David Gamble
8 filed a Joinder to County of Douglas’ Response. Doc. #74. Nelson filed a Reply. Doc. #75. Also
9 before the Court is Defendants County of Douglas, Steven Thaler, and Wendy Garrison’s Motion
10 for Summary Judgment. Doc. #70. Defendant David Gamble filed a Joinder to the Motion for
11 Summary Judgment. Doc. #73. Plaintiffs did not file a Response. Defendants County of Douglas,
12 Steven Thaler, and Wendy Garrison filed a Reply. Doc. #76. Defendant David Gamble filed a
13 Joinder to the Reply. Doc. #77.

14 **II. Discussion**

15 **A. Motion for Clerk’s Entry of Default on Counterclaims**

16 Federal Rule of Civil Procedure 55(a) provides that “[w]hen a party against whom a
17 judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is
18 shown by affidavit or otherwise, the clerk must enter the party’s default.” In light of Nelson’s
19 Motion to Dismiss Counterclaims (Doc. #68), filed October 18, 2013, the Court finds that Clerk’s
20 Entry of Default is not appropriate. Accordingly, Counterclaimants Grace Community Church and
21 City of Refuge’s Motion for Clerk’s Entry of Default on Counterclaims Pursuant to Federal Rule of
22 Civil Procedure 55(a) shall be denied.

23 **B. Motion for Summary Judgment**

24 In its August 23, 2013 Order dismissing Plaintiffs’ claims against Defendants Gamble, City
25 of Refuge, and Grace Community Church, the Court construed Nelson’s “Notice of Withdrawal”
26 as a Motion for Voluntary Dismissal pursuant to Federal Rule of Civil Procedure 41(a)(2). *See*

1 Doc. #64, p. 2. The Court's Order in this regard was confined to Defendants Gamble, City of
2 Refuge, and Grace Community Church, as only those Defendants had filed a Motion to Dismiss at
3 that point in time. Nevertheless, Nelson's "Notice of Withdrawal" was addressed to all Defendants
4 in the present litigation. *See* Doc. #57. As such, the Court finds that its Order dismissing
5 Plaintiffs' claims against Defendants Gamble, City of Refuge, and Grace Community Church is
6 similarly applicable to the remaining Defendants. Accordingly, A3's claims against all Defendants
7 shall be dismissed with prejudice. Nelson's claims against all Defendants shall be dismissed
8 without prejudice. The Court declines to reach the merits of Defendants County of Douglas,
9 Thaler, Garrison, and Gamble's Motion for Summary Judgment at this time, so as to avoid the
10 attachment of prejudice as against Nelson.

11 **C. Motion to Dismiss Counterclaims**

12 While neither party raised the issue, the Court declines to retain supplemental jurisdiction
13 over County of Douglas, City of Refuge, and Grace Community Church's state law Counterclaims.
14 *See Schneider v. TRW, Inc.*, 938 F.2d 986, 993-94 (9th Cir. 1991) (whether to retain supplemental
15 jurisdiction after dismissal of the underlying federal claim is "fully discretionary" with the district
16 court). Because all claims over which the Court had original jurisdiction have been dismissed, the
17 Court finds that the values of economy, convenience, fairness, and comity counsel dismissal
18 without prejudice of the remaining state law counterclaims based upon the Court's declination of
19 supplemental jurisdiction over those claims. *See Acri v. Varian Assoc., Inc.*, 114 F.3d 999, 1001
20 (9th Cir. 1997) ("in the usual case in which all federal-law claims are eliminated before trial, the
21 balance of factors . . . will point toward declining to exercise jurisdiction over the remaining
22 state-law claims") (quoting *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n. 7 (1988)).
23 Accordingly, Nelson's Motion to Dismiss Counterclaims shall be denied as moot.

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1 IT IS THEREFORE ORDERED that Counterclaimants Grace Community Church and City
2 of Refuge's Motion for Clerk's Entry of Default on Counterclaims Pursuant to Federal Rule of
3 Civil Procedure 55(a) (Doc. #66) is DENIED.

4 IT IS FURTHER ORDERED that Defendants County of Douglas, Thaler, Garrison, and
5 Gamble's Motion for Summary Judgment (Doc. #70) is DENIED.

6 IT IS FURTHER ORDERED that A3's claims against all Defendants shall be dismissed
7 with prejudice.

8 IT IS FURTHER ORDERED that Nelson's claims against all Defendants shall be dismissed
9 without prejudice.

10 IT IS FURTHER ORDERED that Nelson's *pro se* Motion to Dismiss Counterclaims (Doc.
11 #68) is DENIED without prejudice.

12 IT IS FURTHER ORDERED that Counterclaimants County of Douglas, City of Refuge,
13 and Grace Community Church's Counterclaims shall be dismissed without prejudice.

14 IT IS SO ORDERED.

15 DATED this 6th day of May, 2014.

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18 LARRY R. HICKS
19 UNITED STATES DISTRICT JUDGE
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